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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

2000 Biennial Regulatory Review --)
Telecommunications Service Quality)
Reporting Requirements)

CC Docket No. 00-229 }

AT&T CORP. REPLY COMMENTS

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Pursuant to the Commission's Notice of Proposed Rulemaking, released November 9, 2000, in the above captioned proceeding,^{1/} AT&T Corp. ("AT&T") hereby respectfully submits these reply comments.

INTRODUCTION AND SUMMARY

The comments overwhelming demonstrate the NPRM's proposed changes in service quality reporting are premature and ill advised. As an initial matter, the commenters show the statutory standard for repeal or modification of existing regulations has not been met. The price cap incumbent local exchange carriers ("ILECs") do not face any "meaningful economic competition" in their local markets that would justify elimination of ARMIS service quality reporting under Section 11 of the Act.^{2/} Due to the lack of competitive alternatives, state authorities unanimously agree that continued use of the ARMIS service quality reports is needed

^{1/} 2000 Biennial Regulatory Review -- Telecommunications Service Quality Reporting Requirements, CC Docket No. 00-229, Notice of Proposed Rulemaking, FCC 00-399 (rel. Nov. 9, 2000) ("NPRM").

^{2/} See 47 U.S.C. § 161.

to protect consumers, especially in light of clear evidence of declining ILEC service quality. The comments further demonstrate that state commissions and IXC's currently use the ARMIS reports to detect and address declining service quality by the ILEC's. For these reasons, NARUC, numerous individual state commissions, and many industry participants oppose the elimination of these requirements. Moreover, the comments show that the current service quality reporting requirements are not burdensome on the ILEC's. Indeed, the ILEC's make no such showing, nor do they demonstrate that the minimal costs of continued ILEC reporting requirements outweigh their substantial benefits to the public interest and consumer welfare generally.

In sharp contrast the comments also show that any new competitive local exchange carrier ("CLEC") reporting obligations could harm CLEC's and would certainly require a diversion of resources from competitive entry to regulatory compliance. The commenters demonstrate that new CLEC service quality reporting requirements are not necessary, would create incentives for ILEC discrimination, may impede competitive entry, and are inappropriately considered as part of this biennial review proceeding – especially since other Commission dockets are independently reviewing the possible imposition of new and additional CLEC reporting requirements.

DISCUSSION

I. THE COMMENTS CONFIRM THAT THE COMMISSION SHOULD MAINTAIN CURRENT SERVICE QUALITY REPORTING REQUIREMENTS FOR PRICE CAP LECs.

The non-ILEC commenters agree, the Section 11 standard for repealing a current regulation has not been satisfied for the ARMIS service quality reporting in question.^{3/}

^{3/} As AT&T discussed in its initial comments, some of the current reporting requirements may not be of use to interested parties and therefore may be eliminated. *See* AT&T at 2 n.4.

Predictably, only the ILECs themselves argue otherwise. But their arguments ignore the plain statutory language, misconstrue the prerequisites for repeal, and are generally without merit. Indeed, the ILECs' arguments that the ARMIS reports lack utility are unsupported and belie the substantial importance state commissions and other commenters place on continued access to ARMIS service quality data.

A. The Standards For The Repeal Or Modification Of The ARMIS Service Quality Reporting Requirements Have Not Been Met.

In arguing for the repeal of ARMIS service quality reports, the ILECs attempt to ignore or misinterpret the statutory prerequisites under a Section 11 analysis. Qwest, BellSouth, and others articulate the wrong statutory standard.^{4/} Specifically, Qwest argues that, under Section 11 of the Act,^{5/} “[i]f the Commission cannot demonstrate that a rule *is actually necessary* then, according to subsection (b) of the statute, it must be repealed or modified.”^{6/} Similarly, BellSouth contends, “[t]he Commission is under a statutory obligation either to justify both the existing and proposed reporting requirements, or to modify or eliminate them.”^{7/} The ILECs' interpretation is *not* the law.

In the context of a biennial review, the terms for a repeal of a regulation under Section 11 are clear. The Commission is required to “review all regulations ... that apply to the operations or activities of any provider of telecommunications services,” and it “shall determine whether

^{4/} See Qwest at 3-14, BellSouth at 1, 3-4; *see also* ITTA at 5-6, Verizon at 1.

^{5/} 47 U.S.C. § 161.

^{6/} Qwest at 4 (emphasis in original).

^{7/} BellSouth at 4.

any such regulation is no longer necessary in the public interest *as the result of meaningful economic competition* between providers of such service.”^{8/} Under this standard, proponents seeking the elimination of a regulation must show (1) that there is “meaningful economic competition” in the relevant market, and (2) that the “meaningful economic competition” is directly linked to the “result” that the particular regulation is “no longer necessary in the public interest.”^{9/} The ILECs, however, seek to turn this statutory standard on its head by attempting to shift the burden to the Commission to “justify” a regulation’s “necessity” in order to continue it in force. The ILECs are wrong.

It is settled law that, although an administrative agency is free to change or eliminate its regulations, in doing so the agency “is obligated to supply a reasoned analysis for the change.”^{10/} Accordingly, contrary to the ILECs’ claims, an agency considering the elimination of a regulation must presume the regulation is valid unless the agency can demonstrate the regulation is no longer necessary. Although Qwest claims (at 5 n.13) that Section 11 supplies the presumption that was lacking in *State Farm*, the text of the statute plainly shows otherwise.

Section 11 assumes the validity of existing regulations and asks whether they “[are] *no longer necessary*” because “meaningful economic competition” has eliminated the need for them. Thus the statute assumes, the regulation under review was necessary upon adoption, and

^{8/} 47 U.S.C. § 161 (emphasis added). Multiple parties urged the Commission to focus on this straightforward but critical element of the statute. See, e.g., AT&T at 4; Michigan PSC at 2; Joint Commenters at 10; Wyoming PSC at 2; Indiana URC at 2-3; Public Utility Commission of Texas at 2-3.

^{9/} Indeed, Section 11’s standard of “meaningful economic competition” is at least as stringent as Section 10’s standard for forbearance from Commission regulations. Cf. 47 U.S.C. § 160(a) & (b). Section 11 provides for the complete repeal of Commission rules, and therefore “meaningful economic competition” would have to exist industry-wide, since the repeal of Commission rules would affect all carriers. By contrast, the Commission can forbear from its rules selectively under Section 10, by limiting forbearance to particular carriers, services or geographic areas. See 47 U.S.C. § 160(a).

^{10/} See *Motor Vehicles Mfrs. Assn. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (noting that “the revocation of an extant regulation is substantially different than a failure to act”).

unless the Commission can supply the specified reasoned analysis for its elimination (*i.e.* “meaningful economic competition” has obviated the need for the regulation), the regulation must remain.

Furthermore, the Commission has rejected the ILECs’ proposed construction of the statute. The Commission has specifically acknowledged that the primary focus of its biennial review proceedings is to determine whether, as a result of “meaningful economic competition,” any particular regulation no longer serves the public interest.^{11/} Thus, the ILECs are simply wrong that the Commission must “justify” or demonstrate the “necessity” of a regulation in the context of its biennial review in order to allow the regulation to stay in effect.

In sharp contrast, almost all non-ILEC commenters correctly interpret the statute and demonstrate there is in fact no “meaningful economic competition.”^{12/} As the General Services Administration points out, “[t]hese carriers -- especially the LECs under price cap regulation -- control nearly all of the local telecommunications infrastructure in the nation,”^{13/} because CLECs

^{11/} The Commission stated that, although “[a] key purpose of section[] 11 ... is to repeal or modify certain regulations that are no longer necessary *as a result of competition*, and the *primary focus* of the Commission’s review was to evaluate its regulations *in light of that purpose*,” it may determine that other factors, such as changes in technology or changes in the law, may render a particular regulation inappropriate. *The 2000 Biennial Regulatory Review*, CC Docket No 00-175, *Report*, FCC 00-456, ¶ 19 (rel. Jan. 17, 2001) (emphasis added) (“*Biennial Review Report*”). Although the Commission does not specify in the NPRM which “other factors” it is reviewing in connection with the ARMIS service quality reporting requirements, it appears to be relying mainly on the premise that, since the implementation of these regulations, “[s]ignificant marketplace changes have occurred.” *NPRM* ¶ 3. In fact, as demonstrated by the comments and discussed below, there is ample evidence that the ARMIS reporting requirements remain necessary today for a variety of reasons -- including most particularly the indisputable fact that the ILECs’ dominance of the markets for exchange and exchange access services has *not* materially diminished.

^{12/} See, e.g., AT&T at 5; Michigan PSC at 2; NARUC at 2; General Services Administration at 6; Joint Commenters at 10; Focal at 2, ALTS at 5, Texas Office of Public Utility Counsel at 3, 7; Indiana URC at 2-3; Public Utility Commission of Texas at 2-3.

^{13/} General Services Administration at 6. NARUC correctly points out that “large incumbents still hold well in excess of 98 percent of at least the residential market across the country.” NARUC at 2. Even in Texas, one of a few states that the Commission has deemed open for competition, “incumbent carriers serve over 90 percent of the local access lines in the state, and in the vast majority of Texas communities, customers can only choose between an incumbent local carrier and a small number of resellers.” Public Utility Commission of Texas at 3. These statistics make clear that ILECs continue to dominate the local telecommunications marketplace.

control merely 6.7% of the nation's access lines. The Commission recognized that "many consumers have not experienced the benefits of growing competition and cannot change LECs in response to poor quality of service."^{14/} Thus, the fact remains that the vast majority of consumers do not have access to competitive alternatives and must accept the service quality offered by the ILECs.

Moreover, many state authorities express particular concern with the widespread deterioration of ILEC service quality, making it evident that "insufficient competition exists to put pressure on carriers to provide high quality services."^{15/} In a competitive marketplace, the substantial consumer dissatisfaction with deteriorating ILEC service quality should cause a significant customer-shift from ILECs to CLECs. Interestingly, BellSouth asserts "[c]ustomers who receive poor quality will do what consumers in competitive markets have done since the beginning of capitalism -- obtain service from a competitor."^{16/} Yet BellSouth and other ILECs provide no evidence of customer shifts from ILECs to CLECs, even where ILECs' service quality has substantially declined. In fact, the commenters show the reality is that the overwhelming majority of consumers do not yet have an alternative to the ILEC.^{17/} The state commission commenters are virtually unanimous in saying, because "we do not have meaningful

^{14/} 1998 Biennial Regulatory Review -- Review of ARMIS Reporting Requirements; Petition for Forbearance of the Independent Telephone and Telecommunications Alliance, 14 FCC Rcd 11443, 11464 (1999) ("ITTA Forbearance Order").

^{15/} Texas Office of Public Utility Counsel at 3, 7 (further noting that "[m]any residential customers, especially those in non-metropolitan areas, have not yet seen competitive alternative to their incumbent local exchange carrier"); see also *infra* note 23 (discussing the comments regarding the deterioration of service quality in recent times).

^{16/} BellSouth at 5.

^{17/} In addition, consumers' many appeals to state regulators to fix service quality problems -- as opposed to a flight to competitive carriers -- support the proposition that there are presently few competitive alternatives.

economic competition between providers of basic local service at this time,” any Commission action to reduce the existing service quality reporting requirements would be “premature.”^{18/}

B. The ARMIS Service Quality Reporting Requirements Remain Necessary and Important to Consumers, Government Authorities, and Industry Participants During The Transition To Competition.

In addition to misapplying the biennial review’s legal standard, some ILEC commenters claim the service quality reporting requirements no longer serve their intended purpose.^{19/} But the vast majority of commenters demonstrate the exact opposite: the ARMIS reporting requirements continue to serve their intended purpose by providing regulators, other government agencies, industry participants, and consumers the ability to monitor ILEC service quality and to detect any diminution of service quality.^{20/}

Specifically, Verizon asks the Commission to eliminate ARMIS Reports 43-05 and 43-06 because they are “no longer necessary to meet their original purpose.”^{21/} To the contrary, the record is replete with evidence that interested parties use these ARMIS reports to monitor service quality trends in the marketplace and to detect declining service quality.^{22/} Recently, the ability

^{18/} Michigan PSC at 2; *see also* Indiana URC at 3 (“[a]t this time, we do not believe that there is any meaningful economic competition between providers of basic local service. Therefore, it is premature for the FCC to propose to reduce in any way the existing service quality requirements”); Wisconsin PSC at 3 (“current markets are not yet competitive enough to reduce a regulatory monitoring role”); Wyoming PSC at 3 (“[b]ased on the Commission’s own statistics, it is important that the incumbent providers continue to report regarding the service quality of their networks, since only a very small fraction of overall customers are served by networks owned by the CLECs”).

^{19/} *See, e.g.*, BellSouth at 1-4; Verizon at 2-4; USTA at 1-2.

^{20/} *See, e.g.*, Public Utility Commission of Texas at 2 (“[t]he regulations at issue in this proceeding allow regulators and other parties to evaluate the performance of dominant, facilities-based local exchange carriers in providing their retail and wholesale services”); ALTS at 7 (“[e]ven today, monitoring service quality reports continues to be the only way the Commission can ensure that the ILECs provide quality retail service”).

^{21/} Verizon at 4.

^{22/} *See, e.g.*, California PUC at 2 (“[t]he CPUC, other state commissions, interested parties, and consumers use the service quality information currently contained in the ARMIS report 43-05 to monitor trends in the quality of service provided by various carriers”); CWA at 3 (“[i]t is too early to eliminate service quality reporting measures that provide information to ensure that dominant carriers are providing good quality service”); General Service

(footnote continued on next page)

to monitor service quality has been especially important, because the quality of service provided by many price cap ILECs has drastically deteriorated.^{23/}

The state regulators' comments overwhelmingly support retention of the ARMIS service quality reporting requirements. They continue to use the ARMIS service quality data to detect and address declining ILEC service quality. For example, the Michigan Public Service Commission relies on the federal ARMIS service quality reports to monitor quality of service within its own state, and these reports provide "invaluable support" in that state's service quality proceedings.^{24/} The Wyoming PSC states that the service quality data found in the ARMIS reports are "critical information that is currently of great importance for [regulators'] oversight duties."^{25/} The Indiana Utility Regulatory Commission also relies extensively on the Commission's service quality reports, which have "played a critical role in the past months" in its review of deteriorating service quality in that state.^{26/} The Wisconsin Public Service Commission "uses much of the data contained in the ARMIS 43-05 and 43-06 reports to

(footnote continued from previous page)

Administration at 6 ("service quality data is necessary for the Commission to maintain regulatory surveillance over incumbent LECs that still enjoy extensive market power"); AT&T at 4.

^{23/} See AT&T at 5-6; see also Michigan PSC at 6 ("Ameritech's service quality is at abysmal levels and competition is anemic"); NARUC at 2 ("large incumbents still hold well in excess of 98 percent of at least the residential market across the country ... [and] many of the categories reported to the FCC indicate a long-term negative trend in service quality"); Texas Office of Public Utility Counsel at 5-7 ("[t]he ARMIS Service Quality Reports reveal that nationwide ILEC service quality has declined in nine of eleven categories since 1993"). In the face of these showings, BellSouth's contrary (and unsupported) assertion that the current reporting requirements are of limited utility because "the only information reported is of a few carriers that have a proven track record for quality," is simply not credible. BellSouth at 4. Similarly, USTA's assertion that, because USTA members operate in a "competitive environment ... high quality service must be maintained in order to retain customers," is also false, especially when one considers that the ILECs' service quality is diminishing, while their market share remains strong. USTA at 2.

^{24/} Michigan PSC at 1-2; see also NARUC at 2-4 (discussing the ways in which various states use the ARMIS data).

^{25/} Wyoming PSC at 4.

^{26/} Indiana URC at 2.

administer incentive and penalty mechanisms for companies operating under various forms of alternative regulation.”^{27/} And the Florida Public Service Commission opposes elimination of the reporting requirements because “reductions in reporting requirements will reduce the ability of regulators to determine whether inadequacies [in service quality] exist and how those inadequacies should be addressed.”^{28/} Critically, for many states (and all of the consumers in those states) the ARMIS reports are the only available source of service quality data.^{29/}

NARUC’s comments cut to the chase, stating that “[i]n this environment, it appears, absent some evidence to the contrary,” of which there is none, “elimination of the current federal reporting can only exacerbate the problems”^{30/} of declining ILEC service quality. The Texas Office of Public Utility Counsel’s assessment also pierces the ILECs’ unsupported contentions and lays bare the true state of the marketplace: “[t]he lack of robust competition throughout the local telecommunications markets, both in terms of the type and location of the customer, and the persistence of service quality problems among the major ILECs reinforce” the conclusion that “it is far too early to rely on competitive forces to discipline ILECs with respect to service quality.”^{31/} Indeed, the Commission itself has only recently found that ARMIS 43-05 is “a critical tool for protecting the interests of consumers during the transition to competition.”^{32/} Thus, the simple truth remains that ARMIS service quality data continue to serve the public

^{27/} Wisconsin PSC at 2.

^{28/} Florida PSC at 3.

^{29/} “Only 30 state commissions currently apply service quality reporting requirements to all LECs under their jurisdiction.” General Services Administration at 4.

^{30/} NARUC at 2.

^{31/} Texas Office of Public Utility Counsel at 7.

^{32/} *ITTA Forbearance Order*, 14 FCC Rcd at 11464.

interest, because regulators, industry participants, and other interested parties continue to use these data to protect consumers' interests.

Furthermore, the repeal of national ARMIS reporting would destroy all benchmarking capabilities. Uniform federal reports enable state regulators and others to compare service quality across state lines, to use the federal data as a cross check against similar data submitted to the state, to make comparisons of service quality performance between ILECs, and to benchmark the quality of service provided by an ILEC over time.^{33/} The commenters also demonstrate that eliminating or streamlining the current ARMIS service quality data would sharply reduce the utility of these vital benchmarking tools.^{34/} Very simply, without the federal reporting requirements, the Commission and state regulators will lose the ability to make “apples-to-apples” comparisons “that cannot be made using the various, disparate types of service quality data routinely reported to state PUCs.”^{35/} Moreover, “reducing reporting requirements would permit monopoly ILECs to conceal their service quality performance, and, thus, perpetuate degradation of service quality.”^{36/} Concealing information about deteriorating service quality would harm consumers and diminish regulators' ability to intervene to protect consumers' interests.

To be sure, IXC's also use the ARMIS service quality data to monitor the quality of service ILECs provide to all carriers and to discern whether ILECs are discriminating against

^{33/} See, e.g., Michigan PSC at 2; Texas Office of Public Utility Counsel at 8-9; Indiana URC at 2-3; Public Utility Commission of Texas at 1-2 (“[t]he benefit afforded by national data is the ability to compare performance in Texas with that in other states”).

^{34/} See, e.g., AT&T at 7-9; California PUC at 2 (noting that the ARMIS 43-05 data are “useful because factual continuity is essential in tracking a trend,” and that “it would be disruptive to change the type of data that is currently found in the ARMIS report 43-05 for tracking trends”).

^{35/} Texas Office of Public Utility Counsel at 8.

^{36/} Indiana URC at 3; see also *infra* section II.B.

them.^{37/} Without the ARMIS data, an IXC “may not know how [the] quality [of the service it receives] compares to that offered other providers -- including perhaps an affiliate of the incumbent.”^{38/} Eliminating IXC access to the data they use to detect discrimination would not serve the interests of any consumer and would harm the IXCs.

The comments also demonstrate that generating the ARMIS service quality data places little burden upon ILECs.^{39/} The ILECs themselves certainly fail to demonstrate that the current reporting requirements are an undue burden upon them. Moreover, the non-ILEC commenters show that the consumer benefits derived from enabling regulators and industry participants to detect and address deteriorating service quality far outweigh the any costs associated with the ILECs’ filing of ARMIS service quality reports.^{40/}

In short, ARMIS data have continuing utility for a variety of purposes, and consumers would suffer real harm if ARMIS service quality reporting were terminated. Therefore, the Commission should maintain existing service quality reporting requirements for price cap ILECs.^{41/}

^{37/} See AT&T at 9; WorldCom at 6-7; see also Wyoming PSC at 5.

^{38/} Wyoming PSC at 5. If nothing else, elimination of the data would make it extremely “difficult to monitor discriminatory service quality practices.” *Id.*

^{39/} See, e.g., Texas Office of Public Utility Counsel at 10-11 (“ARMIS is an automated system and reporting ILECs have already incurred the programming expenses and development costs of establishing their data collection and reporting systems that produce the data submitted to ARMIS”); NASUCA at 19 (no ILEC has made a “showing of an unfair or unreasonable burden in collecting or reporting information”); NARUC at 3-4 (“large LECs have made no evidentiary showing that the current reporting levels cause significant burdens on the reporting carriers”); AT&T at 10; see also General Services Administration at 7-8.

^{40/} See Public Utility Commission of Texas at 8 (“the benefit of continued monitoring far outweighs the administrative cost to the carriers of collecting and submitting the information with the Commission”); AT&T at 10.

^{41/} The Commission should also reject ITTA’s request that the Commission eliminate reporting requirements for mid-sized LECs. The Commission has already considered and rejected a similar forbearance request by these carriers. See *ITTA Forbearance Order*, 14 FCC Rcd at 11463-65.

II. THE COMMENTS CONFIRM THAT THE COMMISSION MUST NOT EXTEND SERVICE QUALITY REPORTING REQUIREMENTS TO CLECs.

The commenters also agree that the Commission should not impose new reporting burdens on the CLEC community in the context of this biennial review. The commenters specifically highlight the potential harm caused by the combination of CLEC dependence on ILEC service provisioning and the proposed reporting of CLEC service quality. Moreover, any consideration of new CLEC reporting requirements should be done, if at all, in a separate consolidated proceeding.

A. The Commission Should Not Extend Service Quality Reporting Requirements To CLECs Within The Context Of This Biennial Review Proceeding.

Just one month ago, the Commission stated that, “as part of the biennial review process, we do not intend to impose new obligations on parties *in lieu of* current ones, unless we are persuaded that the former are less burdensome than the latter and are necessary to protect the public interest.”^{42/} In light of the Commission’s own report, any consideration of novel CLEC service quality reporting requirements referenced in the NPRM is misplaced in this proceeding.

No commenter disputes that federal CLEC service quality reporting requirements would be a new regulatory mandate.^{43/} Therefore, the extension of the ARMIS service quality reporting requirements to CLECs would “impose new obligations” on carriers that, by definition, cannot be “less burdensome” than current requirements -- since there are no current requirements. Commenters agree that the biennial review proceeding is not the proper forum for consideration

^{42/} *Biennial Review Report* ¶ 19 (emphasis added).

^{43/} Moreover, the *NPRM* itself recognizes that many CLECs neither have experienced nor “encountered regulatory burdens of this nature at the federal level.” *NPRM* ¶ 29.

of any new reporting^{44/} and that application of reporting requirements to CLECs would not be a “modification” of prior obligations, but rather the imposition of a *new* regulatory burden. For these reasons alone, the Commission should not consider extending service quality reporting requirements to CLECs in this proceeding.

B. The Comments Show New CLEC Reporting Would Be Affirmatively Harmful And An Unnecessarily Burdensome New Regulation.

Extending service quality reporting requirements to CLECs makes little sense in today’s marketplace, in which CLECs are highly dependent on their largest competitors, the ILECs, to provide end-users with service. As NASUCA notes, “[t]his is the inescapable result of ILECs’ continued ability to leverage the vestiges of historic monopoly power and the prohibitively high cost of start-from-scratch-facility construction.”^{45/} Because of this reality, the quality of service that CLECs provide to their customers (and would be required to report) is largely dependent on the quality of service provided to them by the ILECs.^{46/}

Moreover, many commenters agree that imposing CLEC service quality reporting requirements “would provide an incentive for ILECs to provide poor UNE provisioning to their [CLEC] customers, ” thereby artificially distorting CLEC performance metrics.^{47/} Even state commissions that support the extension of service quality reporting requirements recognize that consumers would inevitably and mistakenly attribute poor service quality results to CLECs,

^{44/} See, e.g., AT&T at 12; NTCA at 2; WorldCom at 9-10; USTA at 2, 5.

^{45/} NASUCA at 32.

^{46/} *Id.* (noting “the clear disparity in control over service quality between ILECs and non facility-based carriers”); see also Joint Commenters at 2-3; Focal at 5-6; Teligent at 4.

^{47/} Covad at 5-6; ALTS at 13; Focal at 5. For instance, in a state like Wisconsin, which uses the ARMIS data for penalties associated with poor service quality, an ILEC by delaying provisioning of local loops would expose competitors to monetary penalties.

regardless of whether or not the poor results were within their control.^{48/} Additionally, CLECs treat their service quality metrics as highly confidential and competitively sensitive because, if disclosed, they would provide the ILECs with a roadmap for the most efficient discriminatory activity possible. The discrimination problem recognized by many commenters,^{49/} coupled with reporting obligations, gives ILECs both the incentive and the ability to effectuate predatory self-preference tactics that would inexorably diminish CLECs' ability to compete effectively.

The commenters also show that a truly competitive marketplace will provide consumers with the best comparison information. But any premature attempt to force a quick and easy comparison imperils the development of a truly competitive marketplace.^{50/} Consumers are benefiting as nascent competition emerges and market forces begin to secure the means of fair comparisons between CLEC and ILEC service quality. Although ILECs substantially control the quality of service that CLECs provide to consumers, CLECs "must offer a combination of service quality and price that is superior to that offered by the ILEC; otherwise, consumers would have no reason to leave the incumbent."^{51/} Furthermore, in order to retain their customers, a CLEC must continue to differentiate its product based, in part, on service quality. A failure to do so would likely result in lost customers. As the Texas officials astutely point out: "[f]ocusing

^{48/} Indiana URC at 3 ("customers have no way of knowing how the underlying network is configured and who is truly to blame for the service problems"); Michigan PSC at 4 ("[r]esellers and competitors that purchase network elements from an incumbent LEC may have no control over the service quality of the resold service or the purchased elements"); *see also* Joint Commenters at 5 ("[b]ecause the Commission may be unable to determine whether the service quality information filed by CLECs reflects the CLECs' provision of service or the ILEC's provision of service to its competitor, it should refrain from imposing reporting requirements on CLECs").

^{49/} As ILECs increasingly enter into direct competition with IXC's, the importance of such reports is heightened as the ILECs' incentives to provide poor service quality to IXC's increases. *See* AT&T at 9; WorldCom 6-7; *see also* Indiana URC at 5; Michigan PSC at 5-6.

^{50/} *See* Covad at 5-7; Joint Commenters at 4-5; Focal at 5-6; Teligent at 6.

^{51/} WorldCom at 9; *see also* Teligent at 2 ("[f]or CLECs to remain in business, they must offer service that is of comparable or higher quality than ILECs"); Sprint at 6 ("[a] CLEC that lacks a sufficient level of quality will not be successful because the end-user has the option of returning to the ILEC or possibly moving to another CLEC").

application of the reporting requirements upon ILECs will not jeopardize service quality or harm consumers' interests because in order to retain existing customers and attract new customers, CLECs are compelled to provide a level of service quality that is equal or superior to that of the ILEC."^{52/} Therefore, unlike the ILECs, who face insufficient competitive pressure to improve service quality, market forces ensure that CLECs -- who by definition must compete against a monopoly -- provide the best quality of service within their control.

In addition, the comments demonstrate that imposing service quality reporting requirements on CLECs would be extremely burdensome in light of the limited capital resources available to them.^{53/} Any such service quality reporting requirements would necessarily require CLECs to divert valuable resources from the provisioning of service to customers to meeting new regulatory burdens. This will hinder, not help, the growth of competition, because "the Commission would [be] impos[ing] enormous costs on competitive LECs -- at a time when most of these companies are struggling to survive."^{54/} CLECs would have to establish systems to collect data that they do not ordinarily collect, and organize this data to meet the Commission's requirements. Indeed, as Teligent states, "CLECs lack the economies of scale enjoyed by ILECs to establish large regulatory measuring and reporting organizations practical on a cost basis."^{55/}

^{52/} Texas Office of Public Utility Counsel at 15.

^{53/} See Covad at 5-8; Dynegy at 2; Focal at 6; Joint Commenters at 7; Teligent at 3; WorldCom at 10; AT&T at 11.

^{54/} Covad at 7; *see also* Wyoming PSC at 4 ("we do not want competitive providers to be diverted from their primary focus on achieving success in competitive markets, and worry whether mandatory service quality reporting might be perceived as a hindrance"); Joint Commenters at 7-8 ("[a]t the very least, the time and effort used to collect and submit this data would divert resources from other ... more productive efforts, such as competing with the incumbent"); Focal at 6 ("[u]nlike ILECs, most CLECs are start-up companies with limited financial resources. The collection and reporting of data is expensive and consumes CLEC resources that would be better spent obtaining facilities to serve additional customers"); Teligent at 3 ("[a]t already resource-constrained CLECs, the same operations personnel who would be diverted to complying with service quality regulatory reporting requirements would otherwise be working to actually improve/maintain service quality").

^{55/} Teligent at 3; *see also* ALTS at 12-13; Joint Commenters at 7; Texas Office of Public Utility Counsel at 15.

These administrative costs would significantly outweigh any benefits to the consumer arising from mandatory CLEC reporting requirements.

Finally, this proceeding is only one of a growing list that is considering the addition of new regulatory reporting requirements on CLECs.^{56/} The Joint Commenters correctly conclude that “[s]uch piecemeal implementation of additional regulations on competitive carriers, while most likely to escape substantial scrutiny, also imposes the greatest expense on competitors,” as they must continually modify reporting systems with each new requirement.^{57/} In order for the Commission to properly assess the burdens of these newly proposed reporting requirements, it must consider any additional CLEC regulations in the context of a single consolidated proceeding.^{58/}

^{56/} AT&T at 12. In fact, since AT&T filed its initial round of comments, the Commission has proposed to alter its broadband and local competition reporting requirements. See *Local Competition and Broadband Reporting*, CC Docket No. 99-301, *Second Notice of Proposed Rulemaking*, FCC 01-19 (rel. Jan. 19, 2001).

^{57/} Joint Commenters at 8.

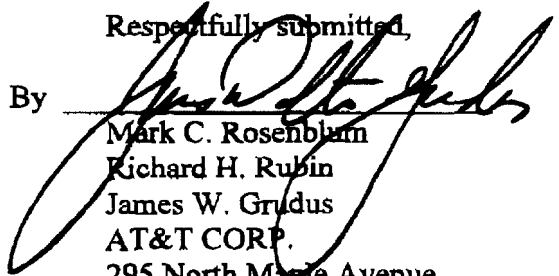
^{58/} See AT&T at 12.

CONCLUSION

For the foregoing reasons and those in AT&T's Comments, the Commission should retain the service quality reporting requirements for price cap LECs, and should not impose new service quality reporting requirements on CLECs.

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February 2001, a copy of the forgoing "AT&T Corp. Rcply Comments" were served on all parties by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.


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February 16, 2001

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